

JOHN MAINS  
Claimant

DOW CONSTRUCTION COMPANY  
RELPH CONSTRUCTION  
Respondents

ITT HARTFORD  
AETNA CASUALTY & SURETY CO.  
Insurance Carriers

## ORDER

## ISSUES

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) The question whether claimant's present need for temporary total and medical benefits is related to an accident at Dow Construction Company or a subsequent incident at Relph Construction gives rise to the issue whether claimant sustained personal injury by accident arising

out of and in the course of his employment. Therefore, the Appeals Board has jurisdiction to review this preliminary hearing Order under K.S.A. 44-534a, as amended by S.B. 649 (1996).

(2) The Appeals Board finds that claimant's present need for medical treatment is more probably than not related to the work-related incident he experienced while working for respondent Relph Construction.

Claimant testified that he initially hurt his right shoulder while working for Dow Construction Company as a frame carpenter on or about March 17, 1996. On that date, claimant was setting trusses in high winds when the wind caught a truss he was holding and pulled his arm. Claimant then sought and received medical treatment from Drs. David P. Miller and Joseph M. Sack. On March 28, 1996, Dr. Sack released claimant to return to work without restrictions as of April 1, 1996. Claimant returned to work for Dow Construction and was ultimately terminated on April 8, 1996.

On April 9, 1996, claimant began working for Relph Construction also as a frame carpenter. On April 29 or 30, 1996, claimant reinjured his right shoulder when he was sheeting a gable and the wind caught the plywood he was holding. After that incident, claimant sought additional treatment from Dr. Sack on April 30, 1996.

The record is devoid of evidence regarding the question whether claimant experienced symptomatology between the time he was released to work on March 28 and the subsequent work-related incident on April 30, 1996. Likewise, the record is devoid of any medical opinion regarding which work-related incident is responsible for claimant's present symptomatology.

Based upon the present state of the record, the Appeals Board finds that claimant, at the very least, temporarily aggravated his right shoulder on or about April 30, 1996 while working for respondent Relph Construction and, therefore, Relph Construction and its insurance carrier should be responsible for claimant's medical treatment and temporary total disability benefits. This conclusion is based upon the fact that claimant worked for approximately one month after his release without restrictions from Dr. Sack and that he apparently did not require medical treatment during that period until after the April 30, 1996 incident. In the absence of more detailed evidence, it appears claimant's need for medical treatment is more closely related to the April 30, 1996 incident rather than the initial incident in March.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark dated June 18, 1996, should be, and hereby is, reversed; that the respondent, Relph Construction, and its insurance carrier, Aetna Casualty & Surety Co., are hereby ordered to provide the preliminary benefits ordered by the Administrative Law Judge.

IT IS SO ORDERED.

Dated this \_\_\_\_ day of August 1996.

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BOARD MEMBER

c: Randy S. Stalcup, Wichita, KS

P. Kelly Donley, Wichita, KS  
Lyndon W. Vix, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director